IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5035 OF 2006

Vivek Provision and General Stores
through A.R. Singh, Proprietor. .....Petitioner.

V/s

1. State of Maharashtra and Ors. ....Respondents.

Shri V.M. Parshurami for the Petitioner.

Shri V.P. Malvankar, AGP for respondent Nos. 1 and 2.

Shri P.S. Gupta for the Respondent No.3.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE : 27th September, 2006

P.C.:

1. Heard.

2. Rule. By consent, rule is made returnable forthwith.

3. Petitioner by this Petition challenges the order dated 12/6/2006 passed by the Minister as an appellate authority whereby the order dated 15/02/2006 under which 8000 Units which were attached to the Petitioner's shop were sought to be cancelled and those Units are sought to be attached to the respondent No.3's shop without even granting any opportunity of being heard to the petitioner.

4. When the matter came up for hearing on the last occasion, at the request of the learned AGP, the same was adjourned in order to ascertain whether the appellate authority had issued notice to the Petitioner before passing the impugned order. Today, when the matter was called out, the learned AGP fairly submitted that the record nowhere discloses any notice having been issued to the Petitioner or that he was heard in the matter before passing the order dated 12/06/2006. The record being very clear about the fact that the petitioner was not heard in the matter despite of the fact that 8000 Units attached to his shop were sought to be delinked from his shop and were awarded to the respondent No.3, the impugned order passed without

hearing the petitioner cannot be sustained.

5. The learned advocate appearing on behalf of respondent No.3, however, submitted that no prejudice is caused to the Petitioner on account of he having been not heard in the matter as the impugned order by which the 8000 Units which were delinked from the Petitioner's shop were, in fact, earlier attached to the respondent No.3's shop and the original position has been restored.

6. Be that as it may, the fact remains that since February 2006, 8000 Units were attached to the Shop of the Petitioner and before they were delinked from the Petitioner's Shop, there was no opportunity to the Petitioner to put-forth his say in the matter. That apparently discloses complete denial of observation of basic principles of natural justice and on that count itself the impugned order is liable to be set aside and the matter is required to be remanded back to the appellate authority to hear the Petitioner before passing any order in the matter.

7. In the result, therefore, the impugned order is hereby

quashed and set aside. The matter is remanded back to the appellate authority with a specific direction that the same shall not be disposed of without the Petitioner being heard in the matter. It is only after hearing all the parties that the appellate authority should pass the appropriate order in accordance with the provisions of law. In the meanwhile the situation, which was prevalent prior to passing of the impugned order i.e. Order dated 12/06/2006, shall be restored forthwith.

8. Rule is made absolute accordingly with no order as to costs.

(R.M.S. KHANDEPARKAR, J.)

(V. M. KANADE, J.)